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**Comptroller General  
of the United States**

Washington, D.C. 20548

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# Decision

**Matter of:** David W. Snearly

**File:** B-271133

**Date:** April 30, 1996

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## DIGEST

Former Navy enlisted member may be granted waiver of his debt for erroneous payment of pay and allowances made to him after the effective date of his discharge where he had been placed on terminal leave prior to discharge, and at the time of the erroneous payment, he had not received discharge papers or final statement of pay because his ship had sailed with his personnel records on board and the ship's personnel had overlooked preparing the discharge papers. In the circumstances, it is not unreasonable for him to have thought he had not been separated from the Navy and was therefore entitled to the additional payment of pay and allowances.

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## DECISION

This responds to an appeal of a Claims Group settlement<sup>1</sup> that partially waived the collection of erroneous payments of pay and allowances made to David W. Snearly after his separation from the Navy. We conclude that Mr. Snearly's request for a waiver of the remainder of his debt may be granted.

## BACKGROUND

Mr. Snearly, an electronics technician (E-5), was scheduled to be discharged from the Navy in June 1994, after 5 years and 8 months of active duty. Because the ship to which Mr. Snearly was then assigned was scheduled to sail from Charleston for the Mediterranean on or about June 5, 1994, Mr. Snearly was authorized to take terminal leave beginning May 30 pending his discharge rather than sail with his ship and shortly thereafter be flown back to the United States for discharge. However, Mr. Snearly's personnel and pay records were retained on board the ship when it sailed. Mr. Snearly states that he had been told that his DD form 214 (Certificate of Discharge or Release from Active Duty) would be forwarded to him by the date he was due to be discharged, June 17, but he did not receive it by that date nor did he

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<sup>1</sup>Z-2942346, May 12, 1995.

receive the out-processing (including a statement of final pay and allowances) usually provided a member being discharged, since he was not assigned to a shore station and his records were still on shipboard. After he made inquiry, and after his father inquired subsequently on his behalf, Naval officers at Charleston contacted the ship and were advised that the matter had been overlooked, but the discharge papers would be prepared and sent to him. Apparently this was in early July, but because the papers were sent by surface mail, Mr. Snearly did not receive them until July 25.

In the meantime, although he was scheduled to be discharged on June 17, the Navy made payments of pay and allowances to his bank account on July 1 and 15, apparently because the papers had not been prepared and forwarded from his ship in time to prevent the payments. The Navy later determined that as of the effective date of Mr. Snearly's discharge on June 17, he was entitled to receive a final separation payment of \$634.23 which represented pay and allowances for 2 days, 5 days of lump-sum leave, and a clothing maintenance allowance. The payment the Navy made to his account on July 1 was in the amount of \$858.49. As a result of this payment, Mr. Snearly was overpaid \$224.26 (i.e., \$858.49 minus the \$634.23 he was due on separation). The payment made to his account on July 15, in the amount of \$654.15, was the usual mid-month payment of pay and allowances he had been receiving on active duty. The Navy determined that the entire July 15 payment was erroneous because it was for a period after the effective date of Mr. Snearly's discharge, June 17. Thus, the total amount of the overpayments to Mr. Snearly was \$878.41.

Several months later, the Navy discovered the overpayments and sought refund from Mr. Snearly. He initially responded that he did not think he had been overpaid, and he asked for documentation explaining the payments he had received, including leave and earnings statements for the last 3 months of his active duty, which he indicated he had not received. The Navy furnished him the documentation, and he subsequently sought waiver of the debt.

Based upon a report from the Navy, our Claims Group waived the overpayment of \$224.26, on the basis that Mr. Snearly received the July 1 payment in good faith and could not be expected to know that it exceeded the amount he was entitled to receive as his final payment on discharge. However, the Claims Group denied waiver of the \$654.15 erroneously paid to his account on July 15, stating that after receiving the July 1 payment, he should have known he was not entitled to any further payments after the date of his discharge.

In support of Mr. Snearly's appeal, the Navy has now provided information indicating that Mr. Snearly believed he had not been discharged from the Navy until he received his discharge papers, which he had been actively pursuing because he

could not obtain civilian employment without them. Mr. Snearly thus asserts that he saw no reason to question the validity of the July 15 payment to his account.

#### ANALYSIS

Under 10 U.S.C. § 2774, we may waive collection of erroneous payments of pay and allowances made to members or former members of the uniformed services if collection would be against equity and good conscience and not in the best interest of the United States. Furthermore, waiver can only be granted if it is shown that the claim arose because of an administrative error, with no indication of fraud, fault, misrepresentation, or lack of good faith by the member or any other person in accepting the overpayment.

The standard we employ in determining whether a member is at fault in accepting an overpayment is whether, under the particular circumstances involved, a reasonable person would have been aware that he was receiving more than his proper entitlement. MS1 Johnny Singletary, USN (Retired), B-254328, Nov. 17, 1993. In such a case, the member is expected to retain the questionable payment available for refund and bring the matter to the attention of appropriate service officials. 4 C.F.R. § 91.5(b).

Generally, where a member has gone through the usual out-processing procedures, received his discharge papers and an itemized statement of his final pay at time of discharge, he would be expected to realize an error had occurred if he received a subsequent additional payment, and waiver would not be granted. See e.g., Elizabeth G. Thompson, B-255988, May 31, 1994; and MS1 Johnny Singletary, supra.

As noted above, Mr. Snearly did not go through the usual out-processing and he did not receive his discharge papers until over a month after the date the discharge was made effective. In addition, upon inquiry about the discharge papers, he finally was told in early July (3 weeks after his anticipated discharge date) that personnel on the ship had overlooked the matter and the papers had not been prepared, but they would be prepared and sent to him. Also, it appears he received no statement of final pay nor had he received leave and earnings statements for the period he was on terminal leave, and apparently for sometime prior thereto.

In light of the circumstances of this case, we believe it was not unreasonable for Mr. Snearly to have thought that he was not discharged on June 17, the anticipated date, since he was told in July that the documents effectuating his discharge had not been prepared. When they were actually prepared is not clear from the record, but apparently it was sometime well past June 17. Since Mr. Snearly did not receive the discharge documents until July 25, we do not find it unreasonable for him to have assumed he had not been separated from the Navy until late July, and

he was entitled to the July 15 payment credited to his account.<sup>2</sup> We also note that there is no indication in the record that Mr. Snearly had any special knowledge of personnel or payroll processes. Therefore, we believe that a combination of the totality of circumstances in this case supports a finding that Mr. Snearly's failure to make inquiries into the validity of the July 15 payment does not constitute fault under the waiver statute. See Donna J. Chambers, B-229109, June 8, 1988.

Accordingly, we grant waiver of the remainder of Mr. Snearly's debt, totaling \$654.15.

/s/Seymour Efros  
for Robert P. Murphy  
General Counsel

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<sup>2</sup>In this regard, we note that ordinarily a member of an armed force is not to be discharged or released from active duty until his discharge certificate or certificate of release from active duty and his final pay, or a substantial part thereof, are ready for delivery to him. See 10 U.S.C. § 1168(a); 63 Comp. Gen. 251 (1984), and cases cited therein.